IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2916 to 2928 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SPECIAL LAQ OFFICER - Appellant(s)
Versus
VISABHAI MOTIBHAI & 1 - Defendant(s)

==========

Appearance :
Mr.S.S.Patel,learned AGP for Appellant(s) : 1,
Mr.Gopinath Amin and Mr.Gaurang Patel for the claimant/claimants

None for Defendant(s) - 2.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 21/08/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.G.M.Amin, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Mr.S.S.Patel, learned AGP for the appellant, states at the Bar that the interest of the respondent No.2 is identical with that of the appellant and there is no conflict in the interest at all. In view of the statement made at the bar, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these appeals upon the respondent No.2. On the joint request of learned advocates for the parties, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the Special Land Acquisition Officer, Narmada

Project, Unit No.3, Ahmedabad has challenged the legality of common judgment and award dated September 9,2004 rendered by the learned Extra Assistant Judge and Special Judge (L.A.R.), Ahmedabad (R) At Navrangpura in Land Acquisition Case Nos.172/01 to Land Acquisition Case No.184/01 by which the claimants are awarded additional compensation at the rate of Rs.67/- per sq.mt., over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.6/- per sq.mt. for their acquired lands.

3. The Executive Engineer, Narmada Project, Division No.4, Dahegam proposed to the State Government to acquire agricultural lands of village Kadadara, Taluka Dahegam, District Ahmedabad for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that certain agricultural lands of village Kadadara were likely to be needed for the said public purpose. Therefore, the State Government issued Notification under Section 4(1) of the Act, which was published in the Official Gazette on July

6,1999. The land owners,whose lands were proposed to be acquired, were served with notices. They opposed to the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Kadadara specified in Notification published under Section 4(1) of the Act were needed for public purpose of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made,which was published in the Official Gazette on January 6,2000. The interested persons were thereafter served with notices under Section 9 of the Act for determination of compensation payable to them. They appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 22,2000 offered compensation to the claimants at the rate of Rs.6/- per sq.mt. The claimants were of the opinion that the offer of

compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as noticed earlier.

4. On behalf of the claimants witness Pratapji Kalaji was examined at Exh.22. According to him the lands acquired were highly fertile and the claimants were able to take 2 to 3 different crops in a year because irrigation facilities by way of wells and bore wells were available through-out the year. What was mentioned by the said witness on oath was that each claimant was earning net agricultural income of Rs.50,000/- per Vigha per year from sale of agricultural produces. The witness asserted before the court that village Kadadara was developed one wherein facilities like water, light, roads, Co-operative Societies, Post office, Primary School,

Health Center, Milk Society, etc. were available. According to the said witness, the agricultural lands of village Kadadara were also earlier acquired for the purpose of construction of Narmada Canal and the claimants were awarded compensation at the rate of Rs.32/- per sq.mt., as a result of which, the claimants in the instant case were entitled to receive the same amount as compensation with benefit of rise in price of lands in view of gap between Notifications issued under Section 4(1) of the Act in two cases.

5. The said witness was cross-examined by the learned District Government Pleader. The suggestion made to the said witness that population of village Kadadara was around 2500 to 3000 was emphatically denied by him. Similarly, suggestion made on behalf of the Government that the main road was situated at a distance of 2 Kms. from the village was also denied by him. However, it was admitted by him that none of the claimants was keeping account nor he was able to produce any documentary evidence in support of his claim that each claimant was earning substantial

income from the sale of agricultural produces, as stated by him in his examination-in-chief. The said witness was also cross-examined by the learned advocate of the acquiring body. During his cross-examination by the acquiring body, it was maintained by the witness that the claimants were cultivating their lands scientifically.

6. On behalf of the acquiring body witness Narendrabhai Narandas Bhavsar was examined at Exh.48. At the time of recoding of his testimony the said witness was discharging duties as Deputy Executive Engineer. It was asserted by the said witness that the lands acquired were non-irrigated and uneven and that the main town, namely, Dahegam was situated at a distance of 22 Kms. from village Kadadara. It was also mentioned by the said witness that no development had taken place in the village nor irrigation facilities round the year were available in the village.

7. In cross-examination by the learned counsel for the claimants it was mentioned by the witness that he

was deposing about the facts relating to the lands acquired from village Kadadara only upon the basis of the record and that he had no personal knowledge about the lands acquired. It was also admitted by him that he had no evidence to establish that the lands of village Sarvar were more fertile than the lands of village Kadadara.

8. On the basis of evidence adduced by the parties, the Reference Court deduced that previous award of the Reference Court relating to the lands of the same village produced by the claimant at Exh.21 was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that in the case of previous award produced by the claimant at Exh.21 Notification under Section 4(1) of the Act was published in the Official Gazette on April 4,1986 whereas in the instant case the Notification under Section 4 of the Act was published on July 6,1999 and thus there was time gap of 13 years between the issuance of notification under Section 4(1) of the Act in two cases. After noticing the lapse of time

between the issuance of notifications under Section 4(1) of the Act, the learned Judge of the Reference Court held that the claimants were entitled to reasonable rise in price of lands at the rate of 10% per annum in view of judicial pronouncements on the point. In the ultimate analysis, the Reference Court has held that the claimants are entitled to additional amount of compensation at the rate of Rs.67/- per sq.mt., over and above the amount of compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.6/- per sq.mt. for their acquired lands by common judgment and award dated September 9,2004, which has given rise to above numbered appeals.

9. This Court has heard Mr.S.S.Patel,learned Assistant Government Pleader for the appellant and Mr.Gaurang Patel, learned counsel appearing for Mr.G.M.Amin, learned advocate for the respective claimants. This Court has also considered the oral as well as documentary evidence produced by the learned counsel for the parties for the perusal of the court.

10. As noticed earlier, it was the case of the claimants that the lands acquired were highly fertile and that each claimant was able to raise 2 to 3 crops in a year because irrigation facilities were available to the lands acquired round the year. It was also claimed on behalf of the claimants that each claimant was earning net agricultural income of Rs.50,000/- per Vigha per year. However, no evidence could be adduced by any of the claimants to substantiate the said claim. Further the record does not indicate that the claimants had claimed enhanced compensation on yield basis. Therefore, the assertion made by the witness Pratapji Kalaji examined at Exh.22 on behalf of the claimants that each claimant was earning net agricultural income of Rs.50,000/- per Vigha per year and that the claimants should be paid compensation on the said basis has little importance. It is also an admitted position that the claimants did not claim enhanced compensation on the basis of sale deed. No sale deed relating to any of the lands acquired nor sale deed of adjacent land could be produced before the Reference Court by the claimants for claiming enhanced compensation. The

only piece of evidence, which was relied upon by the claimants for the purpose of enhanced compensation, was previous award of the Reference Court relating to lands of this very village, which were acquired earlier for the same purpose. The previous award of the Reference Court relating to the lands of this very village was produced by the claimants at Exh.21. It indicates that as many as 28 pieces of agricultural lands were acquired from village Kadadara, Taluka Dahegam, for the public purpose of construction of Narmada Main Canal of Sardar Sarovar Project pursuant to publication of Notification under Section 4(1) of the Act in the Government Gazette on April 3, 1986 and April 4,1986. Therein the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1/- per sq.mt. by two different awards dated December 1,1988 and January 21,1989. Feeling aggrieved by the said offer the claimants had sought references which were made and registered as Land Acquisition Case Nos.267/91 to 291/91, 714/91, 715/91, Land Acquisition Case No.248/92 and Land Acquisition Case No.249/92. Before the Reference Court the claimants

had claimed compensation at the rate of Rs.50/- per sq.mt. On the basis of documentary and oral evidence adduced by the claimants in the said case, the Reference Court awarded to the claimants additional compensation of Rs.31/- per sq.mt. by common judgment and award dated December 31,2001. Thus Exh.21 would indicate that the claimants, whose lands were acquired from village Kadadara, were awarded compensation in all at the rate of Rs.32/- per sq.mt. The record does not indicate that previous award of the Reference Court rendered in Land Acquisition Case No.267/91 and other cognate matters was challenged either by the Special Land Acquisition Officer or the acquiring body before the higher forum. The record, on the other hand, makes it very clear that the said previous award of the Reference Court was accepted and acted upon. It is well settled proposition of law that previous award of the Reference Court relating to the lands of the same village which has attained finality can be taken into consideration while assessing market value of the lands acquired subsequently from the same village. Under the circumstances, this court is of the opinion that

Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of very village for the purpose of determining the market value of the lands acquired in the instant case. It is not disputed by the learned counsel for the appellant that on the basis of previous award produced by the claimants at Exh.21 the claimants would be entitled to compensation at the rate of Rs.32/- per sq.mt. It is relevant to notice that as far as previous award is concerned Notification under Section 4(1) of the Act was published in the Official Gazette on April 4,1986 whereas in the instant case Notification under Section 4(1) of the Act was published on July 6,1999. Therefore, there is no manner of doubt that there was time gap of more than 13 years between the issuance of Notifications in two cases. The Supreme Court has ruled in several decisions that the market value of the lands acquired cannot be freezed at the rate fixed for similar lands acquired years ago. What is laid down by the Supreme Court is that reasonable rise in price of land should be granted to the claimants while determining the compensation payable

to the claimants under the provisions of the Act. In catena of decisions the Supreme Court has laid down that rise in price of land at the rate of 10% per annum should be considered to be proper while determining the market value of the lands subsequently acquired. Therefore, this court is of the opinion that the Reference Court did not commit any error in granting 10% rise in price of the lands acquired in the instant case on the basis of previous award of the Reference Court relating to the lands of this very village. Once it is held that the claimants were entitled to reasonable rise in price of land at the rate of 10% per annum, it becomes evident that they would be entitled to additional compensation at the rate of Rs.67/- per sq.mt. Therefore, the finding recorded by the Reference Court that in all the claimants are entitled to compensation at the rate of Rs.73/- per sq.mt. is just and not liable to be interfered with. The Reference Court has correctly appreciated the facts on record and applied the settled proposition of law to the proved facts. No ground is made out by the learned Assistant Government Pleader to interfere with the impugned

award in the instant appeals and,therefore, the appeals, which lack merit, deserve dismissal.

11. For the foregoing reasons, all the appeals fail. Therefore they are dismissed. There shall be no order as to costs.The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

arg